

September 23, 2005

Steve Mele, Principal
ML Associates LLC
[Address Redacted]
West Hollywood, CA 90069

**Re: Your Request for Advice
Our File No. A-05-184**

Dear Mr. Mele:

This letter is in response to your request on behalf of Assemblymember Mark Leno for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹ The Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained herein apply only to prospective actions.

QUESTION

How may Assemblymember Mark Leno return a contribution received into his Leno 2004 candidate's campaign committee in excess of the contribution limits when the committee is now terminated and all of its funds have been carried over, under regulation 18537.1, to Mark Leno for Assembly 2006, the candidate's committee for reelection?

CONCLUSION

While a return of the contribution in question would not remove the violation, Mr. Leno may submit a request to reopen Leno 2004 under the procedures outlined in regulation 18404.1, open a bank account to receive a transfer from Mark Leno for Assembly 2006 if reopening of the committee is approved, and return the contribution that was determined to be over the limits.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

FACTS

Assemblymember Mark Leno established a controlled campaign committee, Leno 2004, to seek a seat in the state Assembly in 2004. He was successful in the General Election held in November 2004. At the conclusion of the election, the committee had leftover funds that were transferred without attribution to Mr. Leno's newly-formed reelection campaign committee, Mark Leno for Assembly 2006; the Leno 2004 committee was then terminated. The transfer of contributions was performed under regulation 18537.1 and Government Code section 85317.

Subsequent to the transfer of funds, an audit conducted by the Franchise Tax Board Political Reform Audit Program found that Leno 2004 had accepted a contribution that was in excess of applicable contribution limits. You do not indicate the amount of the contribution, nor whether it was a monetary or nonmonetary contribution. Mr. Leno would like to return the contribution in question to the contributor.

ANALYSIS

Section 85301 prohibits a candidate for state legislative office from accepting a contribution in excess of \$3,300 per election from a person. (Regulation 18545(a)(1).) (The limit was \$3,200 in 2004.) Section 85302 limits contributions from a small contributor committee to a state legislative candidate to no more than \$6,700 per election. (Regulation 18545(a)(4).) (The limit was \$6,400 in 2004.) Neither the Act nor its regulations provide an exception for accepting a contribution over the limits. However, regulation 18531 does provide guidance on when a returned contribution may be deemed not to have been accepted.

- “(a) Contributions which either in the aggregate or on their face exceed the contribution limits ... shall be deemed not to have been accepted ..., if returned pursuant to this section.
- (b) A monetary contribution shall be returned prior to deposit or negotiation, within 14 days of receipt.
- (c) A non-monetary contribution shall be returned by returning to the contributor, within the deadline specified in subdivision (b) any of the following:
 - (1) The non-monetary contribution.
 - (2) Its monetary equivalent.
 - (3) The monetary amount by which the value of the non-monetary contribution exceeds the contribution limits....”

You state that Mr. Leno wants to return an excessive contribution.

Section 85316 restricts a candidate for state elective office from accepting contributions after the date of an election except to pay net debts outstanding from the election. However, “net debts outstanding” includes any costs associated with complying

with the post-election requirements of the Act. In addition, section 85319 allows a candidate for state elective office to return all or part of any contribution to a donor at any time. (Regulation 18531.61(d).)² Therefore, you may request to reopen the Leno 2004 committee using the procedures outlined in regulation 18404.1 (copy enclosed) for the purpose of returning the contribution received in excess of the contribution limits.

Section 85306(a) allows a candidate to transfer funds from one controlled committee to another of his or her controlled committees for elective state office under certain circumstances. This would include transfers to refund a contribution received. The funds must be attributed to specific contributors to the committee making the transfer using a "last in, first out" or "first in, first out" accounting method. Thus, if the request to reopen is approved, Mark Leno for Assembly 2006 may transfer funds to Leno 2004³ using either the LIFO or FIFO accounting method once it is reopened pursuant to regulation 18404.1. At that point, Leno 2004 may return the excessive contribution to the contributor, and then be terminated by filing the necessary disclosure reports and statement of organization.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: Kevin S. Moen, PhD
Political Reform Consultant II
Technical Assistance Division

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² While your facts support a decision to approve reopening the 2004 committee, only the Executive Director may grant such a request. (Regulation 18404.1.)

³ Section 85201 provides for the establishment of one bank account for each committee controlled by a candidate. Section 85201(e) provides that all campaign expenses must be made from the account. Thus, the return of the excessive contribution must be made from the bank account of the committee that received the contribution.